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 7

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

11 SEELY MOORE,

12 Plaintiff,

13 v.

14 EXPERIAN INFORMATION
 SOLUTIONS, INC.; EXETER; and
 15 DOES 1 through 100, inclusive,

16 Defendant.

Case No. 5:17-cv-04082-BLF

STIPULATED PROTECTIVE ORDER

(MODIFIED BY THE COURT)

Re: Dkt. 38

17
 18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of
 20 confidential, proprietary, or private information for which special protection from public
 21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 22 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 23 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 24 all disclosures or responses to discovery and that the protection it affords from public disclosure
 25 and use extends only to the limited information or items that are entitled to confidential treatment
 26 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 27 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
 28 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and

1 the standards that will be applied when a party seeks permission from the court to file material
2 under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
8 of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
10 well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
19 consultant in this action.

20 2.7 House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
23 entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
25 action but are retained to represent or advise a party to this action and have appeared in this action
26 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

27 2.10 Party: any party to this action, including all of its officers, directors, employees,
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material;
14 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

16 However, the protections conferred by this Stipulation and Order do not cover the following
17 information: (a) any information that is in the public domain at the time of disclosure to a
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
19 a result of publication not involving a violation of this Order, including becoming part of the
20 public record through trial or otherwise; and (b) any information known to the Receiving Party
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the Designating
23 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time pursuant to
3 applicable law. **For a period of six months after final disposition of this litigation, this
4 court will retain jurisdiction to enforce the terms of this order.**

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party
7 or Non-Party that designates information or items for protection under this Order must take care
8 to limit any such designation to specific material that qualifies under the appropriate standards.
9 The Designating Party must designate for protection only those parts of material, documents,
10 items, or oral or written communications that qualify—so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or retard the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes to a
17 Designating Party’s attention that information or items that it designated for protection do not
18 qualify for protection, that Designating Party must promptly notify all other Parties that it is
19 withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
23 designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a
28 portion or portions of the material on a page qualifies for protection, the Producing Party also
must clearly identify the protected portion(s) (e.g., by making appropriate markings in the

1 margins). A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has indicated
3 which material it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
6 produced, the Producing Party must determine which documents, or portions thereof, qualify for
7 protection under this Order. Then, before producing the specified documents, the Producing Party
8 must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing Party also
10 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,
13 that the Designating Party identify on the record, before the close of the deposition, hearing, or
14 other proceeding, all protected testimony.

15 (c) for information produced in some form other than documentary and for any
16 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
17 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
18 If only a portion or portions of the information or item warrant protection, the Producing Party, to
19 the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the Designating Party’s
22 right to secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the material is
24 treated in accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the basis
6 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
7 notice must recite that the challenge to confidentiality is being made in accordance with this
8 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to review the
13 designated material, to reconsider the circumstances, and, if no change in designation is offered,
14 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
15 stage of the challenge process only if it has engaged in this meet and confer process first or
16 establishes that the Designating Party is unwilling to participate in the meet and confer process in
17 a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 **they shall comply with the undersigned's Standing Order re Civil Discovery**
20 **Disputes** ~~intervention, the Designating Party shall file and serve a motion to retain confidentiality under~~
21 ~~Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days~~
22 ~~of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer~~
23 ~~process will not resolve their dispute, whichever is earlier. Each such motion must be~~
24 **In each Discovery Dispute Joint Report**
25 **(DDJR), the parties shall attest that they have**
26 ~~accompanied by a competent declaration affirming that the movant has complied with the meet~~
27 ~~and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to~~
28 **seek court intervention within the period set out in Standing Order, Section 2.D.**
~~make such a motion including the required declaration within 21 days (or 14 days, if applicable)~~
shall automatically waive the confidentiality designation for each challenged designation. In
addition, the Challenging Party may **seek relief with respect to** ~~file a motion challenging~~ a confidentiality designation at any
time if there is good cause for doing so, including a challenge to the designation of a deposition

In any DDJR

1 transcript or any portions thereof. ~~Any motion~~ brought pursuant to this provision ~~must be~~
2 **the parties shall attest that they have**
3 ~~accompanied by a competent declaration affirming that the movant has~~ complied with the meet
4 and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating
6 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
7 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
8 **sanctions. Unless the Designating Party has waived the confidentiality designation by failing to**
9 ~~file a motion to retain confidentiality~~ **seek court intervention** as described above, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the Producing Party's
11 designation until the court rules on the challenge.

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
14 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
16 the categories of persons and under the conditions described in this Order. When the litigation has
17 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location and
20 in a secure manner that ensures that access is limited to the persons authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
22 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
27 Bound" that is attached hereto as Exhibit A;

28 ///

///

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
6 and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, mock
9 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
15 separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
20 LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
23 must:

24 (a) promptly notify in writing the Designating Party. Such notification shall
25 include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to
27 issue in the other litigation that some or all of the material covered by the subpoena or order is
28

1 subject to this Protective Order. Such notification shall include a copy of this Stipulated
2 Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the subpoena
6 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
7 before a determination by the court from which the subpoena or order issued, unless the Party has
8 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
9 expense of seeking protection in that court of its confidential material—and nothing in these
10 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
11 disobey a lawful directive from another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
13 LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
16 Parties in connection with this litigation is protected by the remedies and relief provided by this
17 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
18 additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
21 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
22 Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-Party
24 that some or all of the information requested is subject to a confidentiality agreement with a Non-
25 Party;

26 (2) promptly provide the Non-Party with a copy of the Stipulated
27 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
28 description of the information requested; and

1 (3) make the information requested available for inspection by the
2 Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the Receiving Party may
5 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
6 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
7 possession or control that is subject to the confidentiality agreement with the Non-Party before a
8 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
9 burden and expense of seeking protection in this court of its Protected Material. **Any such disputes
10 are subject to the undersigned's Standing Order re Civil Discovery Disputes.**

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
12 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
13 the Receiving Party must immediately (a) notify in writing the Designating Party of the
14 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
15 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
16 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, the obligations of the
22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
23 provision is not intended to modify whatever procedure may be established in an e-discovery
24 order that provides for production without prior privilege review. Pursuant to Federal Rule of
25 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
26 communication or information covered by the attorney-client privilege or work product
27 protection, the parties may incorporate their agreement in the stipulated protective order
28 submitted to the court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered
8 by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
13 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
14 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
15 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
16 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
17 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
18 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
19 unless otherwise instructed by the court.

20 13. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has

1 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected
6 Material. Any such archival copies that contain or constitute Protected Material remain subject to
7 this Protective Order as set forth in Section 4 (DURATION).

8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9
10 Dated: March 30, 2018

TROUTMAN SANDERS LLP

11 By: /s/ Chad R. Fuller

12 Chad R. Fuller

13 Justin M. Brandt

Attorneys for Defendant

EXETER FINANCE LLC

14 Dated: March 30, 2018

SAGARIA LAW, P.C.

15 By: /s/ Elliot W. Gale

16 Elliot W. Gale

17 Attorneys for Plaintiff

SEELY MOORE

18 Dated: March 30, 2018

JONES DAY

19 By: /s/ Benjamin C. Lee

20 Benjamin C. Lee

Attorneys for Defendant

EXPERIAN INFORMATION SOLUTIONS,

21 INC.

22 (MODIFIED BY THE COURT),
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24
25 DATED: April 5, 2018

26 
United States District Magistrate Judge

27 Howard R. Lloyd

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of _____ [**insert formal name of**
7 **the case and the number and initials assigned to it by the court**]. I agree to comply with and
8 to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____

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CERTIFICATE OF CM/ECF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 30, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil L.R. 5-1. Any counsel of record who have not consented to electronic service through the Court’s CM/ECF system will be served by electronic mail, first class mail, facsimile, and/or overnight delivery.

/s/ Chad R. Fuller
Chad R. Fuller

SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I attest that concurrence in the filing of the document has been obtained from Elliot W. Gale, counsel for Plaintiff, and Benjamin C. Lee, counsel for Experian Information Solutions, Inc., which shall serve in lieu of their signatures on the document.

/s/ Chad R. Fuller
Chad R. Fuller